



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 23, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0134

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate.	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleges that Named Employee #1 lacked sufficient probable cause to arrest an individual for assault. The Complainant also alleges that Named Employee #1 failed to properly report this arrest. Lastly, the Complainant alleged that Named Employee #1 engaged in biased policing by arresting someone because of that person's political viewpoints.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

On August 18, 2018, at approximately 3:45 p.m., Named Employee #1 (NE#1) was staffing a demonstration in the vicinity of 4th and Cherry in downtown Seattle. The demonstration involved two groups with differing political viewpoints. Physical confrontations had occurred at like demonstrations in the past and were expected to occur again on this date. A physical confrontation did, in fact, occur between two individuals. One of those individuals – referred to here as the Subject – was arrested by NE#1.



The Complainant later initiated a complaint regarding this incident. The Complainant asserted that NE#1 did not have sufficient probable cause to make the arrest of the Subject. The Complainant also contended that NE#1 arrested the Subject and not the other individual because of the Subject's political viewpoints. Specifically, the Complainant asserted that NE#1 arrested the Subject because he was affiliated with left-wing demonstrators while not arresting the other individual who was affiliated with right-wing demonstrators. Lastly, the Complainant alleged that NE#1 inaccurately orally reported and documented this incident.

In support of his claims, the Complainant provided OPA with video of the incident. Some of the video was taken by the Complainant and appeared to be edited. It showed portions of the incident but not the incident from beginning to end. The video provided by the Complainant also included Body Worn Video (BWV) recorded by officers during this incident. However, like the video the Complainant recorded, the BWV was also edited.

The video recorded by the Complainant showed the two individuals approaching each other. It indicated that the Subject – who was wearing a bandanna around his face – pushed the other individual in the chest. This caused the other individual to move backwards several steps. That individual then swung a closed fist at the Subject. The Subject raised an arm in an apparent block and then appeared to be preparing to punch at the individual. The video then cut away from the physical altercation and showed officers moving towards the fight.

The BWV displayed the beginning of the altercation from across the street. It also depicted the Subject pushing the individual and the individual striking at him. A larger scuffle then broke out. Portions of the BWV showed officers looking for the individual who was struck. It also showed an officer interviewing the individual and him asserting that he was shoved first by the Subject. The video lastly showed NE#1 stating that he observed the assault and other officers agreeing that the Subject was the primary aggressor.

Given that the Complainant's video was edited, OPA reviewed the entirety of the relevant BWV from this incident. This included BWV not provided by the Complainant. The BWV recorded by NE#1 showed that he was situated at the corner of an intersection when he turned to face the corner on the diagonal from where he was. At that point, a physical altercation was beginning within the crowd. NE#1 jogged across the street and joined other officers to separate those involved. Officers then placed the Subject into custody. The BWV showed that NE#1 later orally stated, concerning the arrest, that officers "went over and placed [the Subject] under arrest cause I saw him initiate the assault."

OPA lastly reviewed the arrest report completed by NE#1. He wrote: "Then I observed [the Subject] swing with a closed fist and strike [the individual] in the chest area and [the individual] then return a punch striking [the Subject] in the chest area. I moved in quickly and arrested [the Subject], based on the fact that I observed [the Subject] being the aggressor and becoming physical first in this interaction."

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

Based on a review of the totality of the evidence, OPA finds that there was sufficient probable cause supporting the Subject's arrest. The video indicated that the Subject appeared to shove the individual first, establishing that he was the primary aggressor. While there may have been actions that occurred prior to the push, from what NE#1



reported witnessing and from what the video showed, the arrest was appropriate. While OPA finds that NE#1 mistakenly wrote that the Subject's first physical contact with the individual was a punch rather than a push, this does not undermine the probable cause for arrest. Again, the video speaks for itself.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the political beliefs of the subject. (*See id.*)

OPA finds no basis to conclude that the arrest was due to bias held by NE#1 or was due to the political viewpoints espoused by the Subject. Stated differently, the Complainant brought forth no evidence establishing that NE#1 took the Subject into custody for his protected beliefs rather than because NE#1 perceived him to be the primary aggressor in the assault. There is no evidence of bias on the BWV or, for that matter, on the video recorded by the Complainant.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #3

15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate.

SPD Policy 15.180-POL-5 states that: “all reports must be complete, thorough and accurate.” The Complainant asserted that NE#1 made multiple inaccurate statements, including: (1) saying that he could see the altercation when, in the Complainant's opinion, NE#1 was not positioned to do so; (2) saying that the Subject was the primary aggressor; and (3) saying that the Subject's first contact with the individual was a punch rather than a push.

With regard to the first purported inaccuracy, OPA disagrees with the Complainant's characterization of what NE#1 could or could not see. OPA finds that NE#1's body was positioned in a manner that did not foreclose him looking towards the incident and seeing what occurred. In any event, the evidence does not conclusively establish that this could not have occurred as NE#1 described.

Second, as discussed in the context of Allegation #1, OPA finds that NE#1's determination that the Subject was the primary aggressor was reasonable under the circumstances. Most notably, OPA finds that this recitation of the facts was consistent with the video.

OPA agrees with the Complainant that the third statement was inaccurate. The Subject's first physical contact with the individual was a push not a punch. However, OPA finds that this to be largely immaterial. Regardless of whether



the Subject first pushed or punched the individual, he was the primary aggressor, and his arrest was justified. Moreover, there is no basis to conclude that this inaccuracy had some nefarious purpose rather than simply being a misstatement. Ultimately, OPA declines to find that it violated policy.

If NE#1 was still employed by SPD, OPA may have recommended retraining to ensure accurate reports. However, he is no longer an SPD officer and retraining is not applicable. Given this, as well as given that the outcome of the arrest would have remained the same regardless of whether it was a push or a punch and OPA's view that the inconsistency is largely minor, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**